



## The Role of Parole in Solving the Texas Prison Crowding Crisis

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Texas faces a prison crowding crisis with over 152,000 inmates and another 11,156 inmates projected by 2011 according to the Legislative Budget Board.<sup>1</sup> However, the situation would be far more dire were it not for the parole system. In 2005, some 31,211 Texas inmates were placed on some kind of parole supervision. Although the parole system is designed to promote order in prison by providing inmates an incentive for good behavior, it also furthers many other important goals. Through parole, the state manages the prison population, determining the most appropriate time to release inmates before sentencing completion and the level of supervision needed to prevent recidivism and promote community reintegration. Parole is also the primary means by which the state controls the costs of incarceration at the back-end of the system that would otherwise be set at the front-end by locally elected judges and district attorneys.

With parole, rather than truth-in-sentencing which would incarcerate offenders for every day of their sentence, local prosecutors can take public credit for obtaining long prison sentences while the state effectively reduces the sentence years later through a highly confidential process. Moreover, parole recognizes that inmates may change while in prison, a factor which prosecutors and judges cannot predict and take into account at sentencing. Parole can also be seen as the state's response to the problematic incentive created by a dual system of locally elected prosecutors and judges and state-funded incarceration. The incentive is for locally elected officials to

### Recommendations

- Prioritize nonviolent, low-risk inmates, revise offense classifications, and update risk assessment tool.
- Expedite release of inmates revoked from probation for technical violations.
- Revamp strategy for addressing DUI offenders.
- Make state jail confinees eligible for DMS after one year.
- Increase availability of treatment programs and halfway houses that are conditions of parole.
- Consolidate supervision of offenders simultaneously on parole and probation.
- Continue enhancing collaboration between parole system, state government, and local law enforcement.

seek public support and attempt to eliminate any risk of crime in their jurisdictions through the longest sentences possible for every offender at the state's expense—as opposed to managing risks by balancing incarceration costs with other priorities, including better policing programs that may prevent more crime for every dollar spent.

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## Properly targeted parole reforms can ameliorate the prison crowding crisis without endangering public safety.

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Properly targeted parole reforms can ameliorate the prison crowding crisis without endangering public safety. The recommendations here stand in stark contrast to the late 1980's debacle when the state leadership decided to turn the parole system into a gigantic jailbreak rather than incur the cost of building new lockups. Some 750 prisoners were being released early every week, including many murderers and rapists.<sup>2</sup>

Today, there are key differences from the 1980s. These include:

- the state has more than three times as many prison beds due to the early 1990's prison building spree triggered in part by the public outrage at these releases;
- carefully targeted changes that result in only a slight increase in the total parole rate from 27 to 31 percent would be sufficient to virtually eliminate the need for new capacity;
- the state has far more nonviolent inmates who are either ineligible for parole or are being turned down; and
- the state has adopted parole guidelines that consider individualized risk and severity of offense, providing a tool to account for individual factors affecting recidivism risk while also maintaining some degree of uniformity in time served among both inmates who have committed the same offense and offenses of similar severity.

By reforming the parole system through focusing on the nonviolent, low-risk prison population, the state can minimize or eliminate the need for building new prisons while also avoiding the mistakes of the past.

## Overview of the Parole System

The Texas Board of Pardons and Paroles (TBPP), which operates semi-independently from the Texas Department of Criminal Justice (TDCJ),<sup>1</sup> has six appointed board members and 12 commissioners. They review prisoners' files in panels of three and, in some cases, conduct interviews to determine whether early release should be granted. Current law provides two primary means by which prisoners may be released early: discretionary mandatory supervision (DMS) and parole. For both DMS and parole, two of three panelists must vote in favor of release.

In 1995, the Legislature abolished mandatory supervision (MS), which automatically released inmates after their calendar time served and good time equaled the sentence. Well-behaved inmates, as a general rule, receive one year of good time for every year served. While inmates sentenced before September 1, 1996 remain eligible for MS, all other inmates are governed by DMS. Just as with MS, the most serious violent criminals known as "3g offenders" are ineligible for DMS, which includes prisoners guilty of murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, and aggravated robbery.<sup>3</sup>

The word "discretionary" signifies that the parole board must still approve the release after time served and good time equal the sentence. The criteria for this decision are whether the time served is indicative of the inmate's rehabilitation and whether the inmate presents a danger to society. In 2005, 50.28 percent of inmates eligible for DMS were released.<sup>4</sup>

Most inmates become eligible for parole when their actual calendar time served plus good time equals one-fourth of the sentence imposed or 15 years, whichever is less. However, "3g offenders" must serve one-half of their actual sentence (no good time) or 30 calendar years, whichever is less, before becoming parole eligible. Eligible inmates receive a score of between one and seven, with seven being the best, based on their offense level and individualized risk level. The TBPP utilizes a schedule that classifies over 1,900 offenses as low, medium, high,

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<sup>1</sup>The 2005 TBPP annual report states that they are a "separate entity" from the Texas Department of Criminal Justice (TDCJ), but they are funded through the TDCJ budget. The 1989 Criminal Justice Reform Act merged the formerly separate probation, prison, and parole agencies into TDCJ, a change that coincided with a massive prison building spree. Many probation department leaders have indicated they would like to once again be under a separate state agency, arguing that they necessarily play second fiddle within an agency that devotes 90 percent of its budget to prisons.

or very high severity.<sup>5</sup> The second component of the inmate's score is their individual risk factors, which include age, gang membership, employment history, and prison disciplinary record. In 2001, the TBPP adopted guidelines that provide a recommended percentage range for approvals for inmates at each of the seven levels. In 2005, of the 71,027 parole eligible inmates reviewed by the TBPP, 19,582 or 27.5 percent of the total applicants were released.

Timeline for Inmate Sentenced to Four Years in Prison Who Earns Good Time for Behaving Well <sup>ii</sup>		
Eligible for Parole	Eligible for DMS	Released with No Supervision
6 months	2 years	4 years

Source: Texas Government Code §498.003.

For MS, DMS, and parole, the TBPP may set conditions for release in addition to the regular reporting requirements. These can include participation in a pre-release treatment program and GPS monitoring upon release. The Parole Division of TDCJ also operates residential intermediate sanction facilities, which currently house 1,793 offenders who have violated a condition of their parole. Last year, 10,609 parolees were revoked to prison. Of these revocations, 2,034 were for technical violations.

## Recommended Policy Approaches

### *Prioritize Nonviolent, Low-Risk Inmates, Revise Offense Classifications, and Update Risk Assessment Tool*

The evidence-based parole guidelines adopted by the TBPP in 2001 call for 76 to 100 percent of inmates at level seven to be approved for parole. These are nonviolent offenders who also have low individualized risk assessments. Many of them were convicted for possessing a small amount of drugs. However, in 2005, only 52.23 percent of such inmates were granted parole.<sup>6</sup> One parole commissioner approved only 24 percent of the level seven inmates he reviewed. Had 76 percent of applications by level seven inmates been approved—the minimum speci-

fied by the guidelines—another 1,180 inmates would have been released. Similarly, the recommended range for level six is between 51 and 75 percent, but in 2005 only 41 percent of such applications for parole were approved. Had the 51 percent minimum of level six been approved, another 1,072 inmates would have been released.

Applicants who fall in the low risk category have only a 13 percent chance of being rearrested for a felony within two years, less than half the overall state recidivism rate.<sup>7</sup> Since the applicants in levels six and seven are not only low risk, but also nonviolent offenders, most of them who do recidivate will commit another nonviolent offense. For example, the federal Bureau of Justice Statistics found that, while released rapists had a 2.5 percent chance of committing another rape within three years, released drug offenders had only a .4 percent chance of committing a rape, meaning that rapists are more than eight times as likely to recidivate in this manner.<sup>8</sup>

At the same time the TBPP is falling *below* the guidelines for releasing the lowest risk and nonviolent offenders, they have recently *exceeded* the guidelines for releasing the highest risk offenders. The Sunset Commission staff report for the 80<sup>th</sup> Legislature noted that in 2003 and 2004, the TBPP released more high-risk, high-offense severity offenders with the lowest three scores than would have been released under the maximum guideline rate.<sup>9</sup> In 2005, TBPP did not exceed the guidelines for any category, but they did approve 805 more offenders with a score of two than the guidelines' minimum approval rate even while falling far short of the minimum rate for inmates at levels six and seven. The Sunset Commission also found odd disparities in approval rates based across the six locations in the state that have review panels. For example, category seven inmates reviewed by panels in Gatesville were approved for release at a 38.29 rate compared with a 57.58 in Palestine.

The offense classifications used by the TBPP are evidence-based and were developed in coordination with the National Institute of Corrections, which is part of the U.S. Department of Justice's Bureau of

<sup>ii</sup>These figures are applicable for Trusty I, II and III inmates who receive 30 days good time for each 30 days served. Trusty V and Line Class inmates earn between 0 and 25 days good time. All classes other than Line Class III can earn an extra 15 days good time for work and school credits. Inmates are initially classified as Line Class I and can either be promoted to a Trusty level or demoted to Line Class II or III based on their behavior. Source: Texas Department of Criminal Justice Code Tables and System Messages.

Prisons. The classifications largely categorize non-violent crimes as low and medium severity and violent crimes as high and very high severity. Appropriately, capital murder and aggravated kidnapping and rape are rated very high and homicide, kidnapping, and rape are simply rated high. Yet, certain types of riot participation, unlawfully carrying a concealed weapon in a prohibited place, and delivery of less than five pounds of marijuana in a drug free zone also receive the same high designation. The TBPP should reexamine these classifications and develop a mechanism for updating their individualized risk assessment to reflect the latest research on recidivism probabilities for various types of offenses and offender characteristics.

The Sunset Commission staff report recommends that the TBPP be statutorily required to annually review and update its parole guidelines, report and explain to the Legislature its efforts to meet the guidelines, and direct each parole panel member who departs from the guidelines to provide specific reasons explaining the deviation. However, the Commission notes that Section 508.144(b) of the Government Code already requires a panelist who deviates to make a statement in the record, but that the notations currently made are simply the standard reasons for denying parole, not rationales for deviating from the guidelines. The Commission stops short of requiring that the TBPP follow its own guidelines, citing the need for discretion. Ultimately, while the Commission's recommendations have merit, their proposed statutory changes may have little impact because they are merely advisory except insofar as they require more reporting and documentation.

In addition to prodding TBPP to follow its own guidelines, there is another way to increase the parole rate of level six and seven offenders that may have more impact while actually lessening the paperwork burden. A statutory change could be made so that level six and seven offenders are granted release if the first panelist votes yes while continuing the current system of requiring two out of three votes for other offenders. Since five of the 18 panelists currently approve more than 60 percent of level seven inmates, this change would likely result in a substantial increase in releases of the lowest risk, lowest level offenders. It would also reduce the caseload of

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each reviewer, allowing more resources to be focused on the most difficult cases. Some parole commissioners review as many as 15,000 cases per year, and on average the commissioners have only 14 minutes to consider each case.

### *Expedite Release of Inmates Revoked from Probation for Technical Violations*

Probationers revoked for technical revocations, as opposed to a new offense, accounted for 13,455 of the prisoners admitted in 2005.<sup>10</sup> Technical violations of probation include missing meetings, absconding, and failing a drug test. Technical revocations from probation result in an average prison sentence of 2.5 years. Since these inmates have not committed a new offense, they should be prioritized for early release. This can be accomplished by enacting legislation restoring MS for prisoners incarcerated for technical violations of probation. House Bill 2193 by Rep. Jerry Madden (R-Plano), the probation overhaul legislation that failed last session, would have expedited the release of some probationers revoked for technical violations by repealing a provision that denies good time for time spent in community corrections facilities. These are residential treatment programs and work restitution centers for probationers.

### *Revamp Strategy for Addressing DUI Offenders*

Currently, there are 5,594 inmates incarcerated for several instances of driving under the influence (DUI). Most of these inmates are in maximum security prisons and only 500 of them receive treatment for alcoholism while incarcerated.<sup>11</sup> Only 700 of the 5,594 DUI inmates injured someone—the majority are incarcerated simply for multiple offenses. Because DUI offenders receive a high risk classification and the TBPP is afraid to release them, particu-

larly since most have not been treated, DUI offenders have low DMS and parole rates.

Yet, new technology is providing better tools to control DUI offenders in the community. The Parole Division is using GPS to enforce the requirement that, as a condition of release, these offenders refrain from driving. If they are allowed to drive, an interlock device prevents their car from starting unless they soberly exhale. Now, the Parole Division is experimenting with a new device called the Secure Continuous Remote Alcohol Monitor (SCRAM).<sup>12</sup> When worn by DUI offenders, it monitors their bloodstream and alerts their parole officer if they consume alcohol.

Ultimately, all DUI inmates who do not die in prison will be released. While a short time behind bars presumably forces a DUI offender to go cold turkey, there is no evidence that, absent treatment, a longer time in prison will result in them “aging out” of their alcoholism, as is the case for violent offenders.<sup>iii</sup> TDCJ’s current proposal for creating another 500 treatment beds would increase the percentage of DUI inmates receiving treatment from 10 to 25 percent, but many more DUI inmates should be treated. Among the options for increasing the parole rate of DUI offenders are lowering the parole risk classification for DUI inmates to reflect new community monitoring technologies, shortening the maximum prison term for DUI, and implementing a risk reduction credit in addition to good time credit for DUI inmates who successfully complete a treatment program while in prison. A portion of the savings from such changes can be invested in more inpatient and outpatient treatment and enhanced monitoring upon release.

Money may also be better invested in special DUI units as opposed to longer sentences for the minority of drunk drivers who are actually caught. Each officer in the Austin Police Department special DWI unit can arrest 161 drunk drivers per year who might have

otherwise escaped—the vast majority of these offenders will be convicted and many of them will get the interlock.<sup>13</sup> This makes each officer far more efficient in controlling drunk driving than another year of incarceration for the relative handful of total drunk drivers already in prison, whose parole risk can be minimized through treatment and electronic monitoring.<sup>iv</sup>

### ***Make State Jail Confinees Eligible for DMS After One Year***

The 14,755 state jail confinees on hand are not eligible for DMS or parole. Therefore, they serve 100 percent of their sentences, which are a maximum of two years. Yet, these nonviolent offenders have committed less serious drug and property offenses than their counterparts in prison. Most of these state jail felons were convicted of possessing a small amount of drugs, stealing, or forgery.

According to TDCJ, there are 6,200 state jail confinees on hand with sentences of between one and two years, including 1,767 for the two year maximum. By making these offenders eligible for DMS after one year served, or even bringing back MS for such offenders which would avoid overloading parole commissioners, at least several thousand beds per year could be freed up in the state jails.<sup>v</sup> TDCJ has stated that these beds can be used for prisoners who do not require maximum security facilities, and indeed 60 percent of those now in state jails are transferees from prison.

Currently, state jail confinees are simply discharged to the street and are not subsequently monitored. Even though an early release program for state jail felons would put more of them on the street sooner, the crime attributable to them may decrease because they would be released under supervision with access to reentry services, to the extent they are available. The savings would be substantial, as parole costs \$3.15 per day while state jails cost about \$35 a day.

<sup>iii</sup>Statistics indicate that, when offenders of all types are taken together, the higher the age group, the lower the recidivism rate. The relatively small number of Texas inmates who are released on or after reaching the age 65 have only a 7.4 percent recidivism rate.

<sup>iv</sup>There are 1.5 million instances of drunk drivers being apprehended nationally every year and it is estimated that even more drunk driving incidents go unchecked.

<sup>v</sup>For state jail confinees, either MS or the one vote DMS system described above would be the most workable approach to minimize the amount of new cases that must be reviewed by parole commissioners, whose dockets are already very large. It is reasonable to think that commissioners who feel they do not have the time to fully evaluate a file will decline release as a cautionary measure. The number of parole commissioners should also be studied to determine whether additional commissioners are needed to keep up with growing caseloads that have resulted from increased prison populations and the switch from MS to DMS.

### ***Increase Availability of Treatment Programs and Halfway Houses that are Conditions of Parole***

Fifty percent of approved parolees must complete a treatment program as a condition for release. However, at this time TDCJ reports that there are 462 inmates who have been approved for release but remain in prison solely because they have no address. Most apartment complexes will not take parolees and there is a shortage of halfway house beds. In their appropriations request for 2008-09, TDCJ has sought new funding to contract for another 150 halfway house beds. While the need is probably greater, these beds are notoriously difficult to locate due to community resistance.

There are also 1,075 offenders on the waiting list for Substance Abuse Felony Punishment (SAFP) facilities and 210 on the waiting list for In-Prison Therapeutic Community (IPTC) beds. To ease the backlog, TDCJ is seeking an additional 250 SAFP and 200 IPTC slots as exceptional items in its budget request. Most or all of the 450 new slots would be created by adding treatment sources to existing beds, as opposed to building new facilities. By increasing the capacity of halfway houses, SAFP, and IPTC beds, inmates who have already been approved for parole or DMS can fulfill their treatment requirement and be released, freeing up space for new inmates.

### ***Consolidate Supervision of Offenders Simultaneously on Parole and Probation***

There are currently about 2,000 offenders who are on both parole and probation. While it will not have a substantial effect on prison capacity, the state can economize by releasing the offender from whichever term is shorter. This change may reduce technical revocations, as these offenders will no longer be responsible for two sets of requirements.

### ***Continue Enhancing Collaboration Between Parole System, State Government, and Local Law Enforcement***

The public is likely to be more receptive to the parole of additional nonviolent inmates if effective parole supervision and law enforcement practices are in place. After all, if more Texans are being paroled,

the state has a responsibility to ensure that they receive appropriate supervision in the community. Fortunately, since 2000 the Parole Division has utilized the progressive sanctions model that swiftly addresses technical parole violations. Additionally, the Division has begun working with the Austin Police Department to overlay the location of parolees with the Department's GPS system. Police should know where parolees are and parolees should know that they are being watched by law enforcement in addition to their parole officer.

While policing has traditionally been a local function, Governor Rick Perry recently announced \$10 million in state law enforcement funding for the Houston area in response to soaring violent crime.<sup>14</sup> Research has shown that community-oriented policing can deter and solve more crimes by increasing the visibility of law enforcement, encouraging neighbors to cooperate with police, and curbing an atmosphere of disorder through consistent but measured responses to minor crimes.<sup>15</sup> The latter approach is often termed "broken windows" policing and is partly credited for making New York City the safest major city in the United States (2,675.5 reported crimes per 100,000 people) according to FBI crime statistics released earlier this year.<sup>16</sup> Dallas is the most dangerous (8,484.4 reported crimes per 100,000 people).<sup>vi</sup> Effective community policing requires a force large enough to initiate activity rather than simply respond to calls, best practices for assigning officers to beats and neighborhoods, and a performance system that measures the effectiveness of officers by more than simply time worked and arrests.

## **Conclusion**

When setting parole policies, lawmakers must take into account an important but non-quantifiable feedback effect—the likelihood that longer sentences are sought and imposed to account for the known fact that prisoners will serve on average less than two-thirds of their terms. In light of this dynamic, it is important to reconsider the wide sentence ranges for certain offenses, particularly the two to 10 year range for drug possession offenses that are third degree felonies. Otherwise, the prosecutor who previ-

<sup>vi</sup>Dallas has 25.05 police officers per 10,000 residents while New York City has 45.95 officers per 10,000 residents. See <http://www.picapa.org/docs/Whitepapers/White10.pdf>. Texas has an incarceration rate of 694 per 100,000 people compared to New York's 331 per 100,000 people. See <http://www.nicic.org/StateCorrectionsStatistics>.

ously requested eight years for third degree drug possession may ask for 10 years after hearing about even modest changes in the parole system. Adjusting the upper limit for this kind of nonviolent felony would prevent this feedback effect from chipping away at some of the capacity savings that would otherwise be achieved through parole reforms.

Nonetheless, despite this feedback effect, capacity-offsetting reforms to parole as compared with probation are easier to estimate and can be achieved more rapidly because existing inmates are being released and, unlike probation, parole is a state-run system. There is a synergistic effect, as parole reforms will address a greater share of the near-term capacity pressures while probation reforms take longer to implement and divert new offenders from prison, addressing a greater share of long-term capacity pressures. Over the long-term, a smaller percentage of prisoners will consist of nonviolent offenders and technical violators who would be eligible for earlier release under these proposals, because many of them will have already been released and probation reform is diverting more of the new nonviolent offenders from prison and reducing the number of revocations. In short, a comprehensive alternative to new prisons that relieves both short and long-term capacity pressures must involve both parole and probation reform.

In fact, parole reforms are essential even if one or more new facilities are built because the LBB estimates that 7,328 new beds will be needed by 2009. The two proposed new medium and high security state-operated prisons would not be ready until 2011, although the privately operated 1,000 bed minimum security facility with a DUI unit could be ready as early as the beginning of 2009. The difference is due to the shorter construction timetable for private facilities and the fact that lighter units are quicker to build. Even if the Legislature funds these prisons, there will only be 1,000 new beds online by 2009. Consequently, the only alternative to releasing more people may be attempting to place some of these inmates in public or private prisons in other states.<sup>vii</sup>

<sup>vii</sup>The state can lease existing beds from private operators and county jails. Some private operators believe they can accommodate more beds in existing facilities by reallocating space, but Texas Government Code 495.001(b) arbitrarily limits the capacity at any private prison to 1,000 inmates. According to the State Jail Standards Commission, county jails are at about 90 percent capacity, which the Commission regards as optimum because the jails must leave room for new offenders who arrive on a daily basis. Therefore, while there are usually several thousand empty beds available in county jails at any time, the high turnover rate at the county jails means that most of these beds are not available for TDCJ to lease on an annual basis. Also, TDCJ will not lease beds at any of the 30 to 40 county jails that, at any given time, are out of compliance with Jail Standards Commission rules. While the cap on the size of private prisons should be repealed, nonetheless only a fraction of the projected 7,328 new beds needed by 2009 could come from leasing more beds at existing private prisons and county jails.

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Through targeted, evidence-based parole initiatives, more nonviolent, low risk offenders can be released with proper supervision, thereby ensuring public safety while also freeing up existing space behind bars for the most dangerous criminals.

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Given that California is now seeking to export 20,000 of its prisoners to other states due to overcrowding and court orders, and that California pays considerably more per diem than Texas, this proposition would be extremely expensive, if not totally impractical.<sup>17</sup> Perhaps the worst option would be failing to make targeted parole reforms now, running out of beds in a year or two, and then resorting to the haphazard releases of the late 1980s.

Parole may be the 10 foot pole in Texas politics—no one wants to be blamed for releasing an inmate who commits another crime. Yet, with limited taxpayer resources for both corrections and law enforcement, risk must be managed and funds allocated to strategies that will be most effective in reducing crime. Proposals to make parole more difficult, if not impossible, for violent sex offenders will likely be debated in the next legislative session, but lawmakers must also consider parole reforms for offenders at the other end of that 10 foot pole. Through targeted, evidence-based parole initiatives, more nonviolent, low risk offenders can be released with proper supervision, thereby ensuring public safety while also freeing up existing space behind bars for the most dangerous criminals. ★

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## Endnotes

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